IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2748 OF 2005

Yogesh Nivruti More ... Applicant

versus

The State of Maharashtra ... Respondent

...

Mr.N.R. Bubna, for the Applicant.

Mr.K.V. Saste, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

2nd May 2005

P.C.:

. Heard Counsel for the parties. This application for anticipatory bail is filed by the Applicant apprehending arrest in connection with CR.No.I-30/2005 registered with Vedner Khakurdi Police Station.

. The first ground is that, at the relevant time, the Applicant was admitted in hospital

between 15th March 2005 to 18th March 2005. Medical certificate issued by the doctor of the concerned hospital is produced on record at page 21. Nowhere, in this medical certificate, it is stated that the Applicant was admitted in hospital during the said period. All that is mentioned is that the Applicant was advised rest from 15th March 2005 to 18th March 2005 as he was suffering from Maleria. The last sentence of the said certificate clearly mentions that he is medically fit to resume. Suffice it to observe that the plea that the Applicant was in hospital at the relevant time is not substantiated by this medical evidence. Counsel for the Applicant, however, relied on the averments made in the application. As stated earlier, this stand is not substantiated by independent record. If it is so, that ground ought to fail.

. It is next submitted that the Applicant is being falsely implicated on account of the fact that the Applicant’s father had registered case against one of the police officer for offence under the Prevention of Corruption Act. It is contended that the Applicant has been named

in at least 8 offences so far, out of which he has been acquitted in relation to six offences.

. It is then contended that the complainant had no occasion to name the Applicant in the F.I.R. as registered, because the Applicant has no acquaintance with the complainant. The argument is that somehow the investigating officer wants to arrest the Applicant and show recovery of the electric motor from the Applicant. The other four accused have already been released on bail and only recovery of pipe has been shown from them.

. All these contentions, in my opinion, cannot be accepted, because it is only the ipse dixit of the Applicant, without there being any material to support that position. The fact that the Applicant has already been acquitted in six cases does not mean that he has been falsely implicated in the present case. In the present case, the complainant, who is incidentally resident of the same village, has named the Applicant. There is no reason, and it is not even the Applicant’s case, that the complainant

has obliged the concerned police officer by registering the false case against the Applicant. As there is some evidence on record, which needs to be further investigated, after insisting for custody of the Applicant, in my opinion, not a case for anticipatory bail. Hence, this application deserves to be rejected.

. There is one more aspect which needs to be considered. The lower Court in para 7 of the order has observed that the Applicant was not present before the Court at the time of hearing of the anticipatory bail application. That by itself ought to be ground for rejecting the anticipatory bail application. Counsel for the Applicant, however, submits that there is no order on record passed by the lower Court requiring personal presence of the Applicant and the observation so made by the lower Court in para 7 is inappropriate and unwarranted. No such averment has been made in the application as filed before this Court. Suffice it to observe that this is not a case for grant of anticipatory bail. Hence, the same is rejected.

. At this stage, Counsel for the Applicant states that the Applicant be given some reasonable time to surrender. He, however, fairly accepts that he has not been instructed by the Applicant to ask for time to surrender. The request for time to surrender is, therefore, without authority of the Applicant, which is likely to be disputed by the Applicant, who is not present in the Court. Hence, that prayer cannot be acceded to.

(A.M.KHANWILKAR,J.)